Supreme Court of the United States.

No. 368.—October Term, 1905.

Mary Mabel Rogers, Appellant, vs. Henry H. Peck and Wilson S. Lovell. } Appeal from the District Court of the United States for the District of Vermont.

[November 27, 1905.]

Mr. Justice Day delivered the opinion of the Court.

The appellant, Mary Mabel Rogers, having been convicted and sentenced in the county court of Bennington in the State of Vermont of the crime of murder in the first degree, filed her petition on June 19, 1905, for a writ of *habeas corpus* against the sheriff and superintendent of the State prison, in the District Court of the United States for the District of Vermont. The petition, having been heard, was denied on June 22, 1905. From that order an appeal was taken to this court.

The conviction of appellant was had at the December term, 1903, of the Bennington County Court, and she was sentenced to be confined at hard labor in the State prison at Windsor until the third day of November, 1904, and on and after that day to be kept in solitary confinement until February 3, 1905, on which day she should suffer the penalty of death by hanging. On the first day of February, 1905, the Governor of the State of Vermont reprieved the execution of sentence until June 2, 1905. On April 29, 1905, the appellant presented a petition for a new trial to two judges of the Supreme Court of Vermont. On May 5, 1905, the judges made an order allowing the petition for new trial to be filed, and fixed May 10 for the hearing thereof. After hearing before the Supreme Court, sitting at Montpelier, Washington County, on May 30 an order was made dismissing the petition and refusing the new trial. (*Rogers* v *State*, 77 Vt. 454.) On June 1, 1905, the execution of sentence was further reprieved by the Governor until June 23, 1905. Thereupon appellant filed her petition in the Federal court for the writ of *habeas corpus*, which was dismissed, as heretofore stated. On the date of the dismissal of her petition (June 22, 1905) the Governor further reprieved the execution of the sentence until December 8, 1905. The appeal to this court was allowed on June 22, 1905. The petitioner (appellant) averred that, by the various proceedings in the State courts and her incarceration in the prison in solitary confinement, she has been restrained of her liberty and is about to be executed without due process of law, guaranteed for her

protection by the Fourteenth Amendment to the Constitution of the United States.

For the reversal of the judgment and order of the District Court of the United States, discharging the writ and remanding her to the custody of the Vermont authorites, appellant relies upon the following specifications of error:

"First. Because the petitioner was and is deprived of her liberty by the State, and subjected to the punishment of solitary confinement without any statute authorizing such punishment, and without any sentence of any court directing such punishment, and therefore without due process of law.

"Second. Because the Supreme Court of Vermont, having taken jurisdiction of the petition for a new trial, and having failed to comply with the requirements of law in respect of ordering a stay of execution and fixing the time for the execution of the petitioner, has failed to fix a day for the execution, and the Governor of Vermont has no right or authority to fix such a day, and the petitioner is being held to be executed in accordance with a precept not authorized by law, and which is not in and of itself due process of law.

"Third. Because the State of Vermont, having failed to maintain an appellate court in the county of Bennington, as required by its constitution, has deprived the relator of the opportunity to be heard by a court of competent jurisdiction, and thus deprived her of due process of law.

"Fourth. Because the Governor of Vermont, having issued his order requiring execution of the petitioner on December 8, while proceedings were pending in the courts of the United States for her relief on *habeas corpus*, said order of the Governor is to be deemed null and void, and the petitioner should be released from custody thereunder."

We shall notice these several assignments in the order named.

As to solitary confinement of the prisoner, it is not contended that she was not properly sentenced in this respect by the court of original jurisdiction. The statute of the State of Vermont (Vt. Stat. § 2007) provides:

"When execution is not to take place until after six months from date of sentence, the court at the same time shall sentence the respondent to hard labor in the State prison or house of correction until three months before the time fixed in the sentence of death for the execution thereof, and shall also sentence him to solitary confinement in the State prison or house of correction from the expiration of the sentence to hard labor until the time of execution."

The court in sentencing the appellant to be hanged on the first Friday of February, 1905, in pursuance of this statute, imposed a sentence of three months at hard labor until within three months of the time fixed for the execution, and three months of solitary confinement next before the day of execution.

The complaint in this behalf is not of a sentence alleged to have been imposed in violation of law, but because of the manner in which the appellant has been kept in confinement in prison after the original day fixed for the execution of the sentence. She alleges that she is suffering solitary

confinement without due process of law, within the meaning of the Fourteenth Amendment. If she is held in such confinement by the State authorities—which the record does not disclose, the confinement shown being close rather than solitary—we are of the opinion that no case within the Federal protection is made. *Medley's case* (134 U. S. 160) is cited, and relied upon by counsel. That case presented an entirely different question. It was there held that a sentence under a State law passed after the commission of felonious homicide, affixing the punishment of solitary confinement for a period of six months in addition to the death penalty, was an *ex post facto* law within the meaning of section 10, article 1, of the Federal Constitution, and therefore void. In *Rooney* v. *North Dakota*, (196 U. S. 319,) it was held that a statute which substituted close confinement in the penitentiary for a period before execution longer than had theretofore been authorized for confinement in jail, was not an *ex post facto* law. In the present case no sentence or law is being violated, and, assuming the appellant to be held in solitary confinement, there is nothing to prevent her having relief at the hands of the State authorities, and nothing to show that the appellant is being deprived of her liberty in violation of any right secured to her by the Federal Constitution.

The extent of the right of the Federal courts to interfere by the writ of *habeas corpus* with the proceedings of courts and other authorities of a State is carefully defined by statute. When a prisoner is in jail he may be released upon *habeas corpus* when held in violation of his constitutional rights. (Rev. Stat. § 753.) In the case before us, assuming for this purpose that the appellant has been properly convicted and sentenced of one of the gravest offenses known to the law, she is properly restrained of her liberty while in custody, for the purpose of making the sentence effectual. If her custodian is improperly restricting her freedom more than is necessary or legal under State law, there is no reason to suppose that the State authorities will not afford the necessary relief. And certainly there is nothing in this branch of the case to justify Federal interference with the local authority entrusted with the keeping of the prisoner.

The reluctance with which this court will sanction Federal interference with a State in the administration of its domestic law for the prosecution of crime has been frequently stated in the deliverances of the court upon the subject. It is only where fundamental rights, specially secured by the Federal Constitution, are invaded, that such interference is warranted. (*Ex parte Reggel*, 114 U. S. 642; *In re Converse*, 137 U. S. 624; *Allen* v. *Georgia*, 166 U. S. 138; *Hodgson* v. *Vermont*, 168 U. S. 262; *Brown* v. *New Jersey*, 175 U. S. 172; *In re Frederick*, 149 U. S. 70.)

As to the second assignment of error, arising from the failure of the Supreme Court of Vermont to grant a stay and fix a time for execution of the sentence when it entertained and denied the petition for a new trial, at

the time of the ruling in this behalf the prisoner had been reprieved until June second. The decision was made before that day had arrived (May 30th). It is difficult to perceive any good reason for requiring the court to fix a time for sentence which was already definitely set by the reprieve of the Governor. It was the opinion of the Supreme Court of Vermont that it was not required to do so, and this decision cannot be reversed by Federal authority. It has been so frequently ruled by this court, that it is scarcely necessary to cite cases, that the Federal courts will not by writs of *habeas corpus* undertake to reverse the proceedings of the State courts, while acting within their jurisdiction under statutes which do not conflict with the Federal Constitution. (*In re Shibuga Jugiro*, 140 U. S. 291; *In re Wood*, 140 U. S. 278; *Andrews* v. *Swartz*, 156 U. S. 272.)

Whether, when the Governor had issued a reprieve which carried the date of execution beyond the time of decision in the Supreme Court, such action rendered unnecessary the fixing of a new day for execution, was purely a question of State practice, not controlled by the Federal Constitution or laws, and upon which the State court had final jurisdiction. (*Lambert* v. *Barrett*, 159 U. S. 660.)

As to the third assignment, that the State of Vermont had failed to maintain an appellate court in the county of Bennington as required by its constitution, and thereby deprived the appellant of an opportunity to be heard in review by a court of competent jurisdiction, the State has the right to determine for itself the courts in which crime may be prosecuted, and the appellate tribunals, if any, to which such causes may be carried for review. (*McKane* v. *Durston*, 153 U. S. 684, 687.) Due process of law, guaranteed by the Fourteenth Amendment, does not require the State to adopt a particular form of procedure, so long as it appears that the accused has had sufficient notice of the accusation and an adequate opportunity to defend himself in the prosecution. (*Louisville & Nashville Railroad Company* v. *Schmidt*, 177 U. S. 230; *Wilson* v. *North Carolina*, 169 U. S. 586.)

The appellant had the right, by the laws of the State, to have a jury trial before a competent court. Upon exceptions, duly and seasonably taken for errors of law alleged to have occurred upon the trial, the appellant had a right to review in the Supreme Court (Vt. Stat. § 1961), whether this court should be held in each county or at the State capital for all the counties, is entirely a question of State procedure, presenting no Federal question for review here.

The fourth assignment of error calls for the consideration of sec. 766, Rev. Stat. of the United States, as amended. (27 U. S. Stat. 751.) This section provides in substance that any proceeding against a person imprisoned or confined or restrained of his liberty, in any State court, or by authority of any State, pending the proceedings or appeal in *habeas corpus*

cases in the Federal courts, and until final judgment therein, and after final judgment of discharge, shall be null and void. The contention for the appellant in this behalf is that the order further staying execution of the sentence by the Governor of Vermont, made on June 22, 1905, granting a reprieve until December 8 of the same year, was made pending the *habeas corpus* proceedings in the Federal courts, and is therefore void. The order of reprieve was made on June 22, the day upon which the writ was dismissed and appeal allowed to this court, just after the petitioner was remanded to the custody of the State authorities and very shortly before the appeal here was allowed. The power of the Governor of Vermont to grant reprieves in cases of murder is ample. (Constitution of Vermont, Chap. 2, § 11, Amendment, Art 8.) And such power is neither granted nor withheld by the Federal Constitution. (*In re Storti*, 183 U. S. 138.)

It is perfectly apparent that it was exercised in the present instance for the very purpose of permitting the prisoner to appeal to this court, and not to render ineffectual or in anywise interfere with the jurisdiction and orders of the Federal courts. Statutes should be given a reasonable construction with a view to make effectual the legislative intent in their enactment. The object of this statute is apparent. It requires the State courts and authorities to make no order and entertain no proceeding which shall interfere with the full examination and final judgment in a *habeas corpus* proceeding in the Federal courts, (*In re Shiboya Jugiro*, 140 U. S. 291,) and in no wise to interfere with the judgment if it shall result in a restoration of the petitioner's freedom when wrongfully imprisoned or restrained. The proceedings annulled are "against the person so imprisoned," etc. The statute aims to entirely prevent action which shall interfere with the perfect freedom of the Federal courts to inquire into the case and make such orders and render such judgment as they shall see fit.

The reprieve granted has had the effect doubtless intended by the chief executive of the State, to allow the cause to be heard upon appeal in this court. To denominate such an order a proceeding against the prisoner would do violence to the terms of the statute and defeat, not carry out, its purpose.

We are unable to find that the appellant has sustained any violation of rights secured by the Federal Constitution by the proceedings of the executive or judicial departments of the State of Vermont. The final order is affirmed, mandate to issue at once.